

**OPINION
59-121**

December 7, 1959 (OPINION)

GOVERNMENTAL FINANCE

RE: Bonds - Recreational Building - Proposed County and City Project

This is in reply to your request for an opinion of this office in regard to the authority of Burleigh County to join with the city of Bismarck in the financing of a building or buildings which are to be used for recreation, as a youth center, as a public library and for various athletic contests, and shows. The proposed project would apparently require that bonds of both the county and city be issued.

You point out that chapter 21-03 of the N.D.R.C of 1943 authorizes counties to bond "to provide county buildings." The authority given cities in the same chapter is much more specific, i.e., the city is given power to bond for the erection of "libraries, museums, auditoriums, armories, gymnasiums, music halls" etc. Your question therefore is whether the proposed building or buildings would constitute "county buildings" within the meaning of said chapter 21-03.

You call our attention to section 11-1116 of the N.D.R.C. of 1943 giving the board of county commissioners power to erect, repair, and maintain the courthouse, hospitals, jails, and other necessary buildings in and for the county.

It is our thought that the buildings there enumerated are proper "county buildings" within the meaning of said chapter 21-03 and for that reason that county bonds can be issued for the erection of such buildings. (Note the language of Hughes et al v. Pierce County Commissioners, 18 N.D. 474, to the effect that a courthouse and jail are a necessary means for the administration of justice and the enforcement of criminal laws of the state and therefore that "it is the duty of the county to provide a suitable jail and a suitable place for holding court and for offices for the county officials.")

We note that counties are given authority under section 40-3801 of the 1957 Supplement to the N.D.R.C. of 1943 to establish public library service by means of a public library and reading room upon the petition of fifty-one percent of the voters participating in the last general election. To the best of our knowledge the voters of Burleigh County have not as yet taken advantage of this opportunity.

We assume that you are familiar with the statutory provisions for the erection and financing of county memorials, and the various types of structures that have been constructed pursuant to the authority given counties in this filed. However, such projects would appear to relate more specifically to the memorial purpose than to any usual county business affair.

Aside from the above we find no authority or responsibility given by the statutes of this state or established by custom and practice of

the counties of the state that would specifically authorize, or require the counties of the state to erect or maintain buildings to be used for recreation, as youth centers, for athletic contests, or for shows. On this basis it is out opinion that chapter 21-03 of the N.D.R.C. of 1943 does not authorize Burleigh County to issue its bonds to participate in the financing of the proposed project.

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